

VIII. ACQUISITION AND RELOCATION

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A. PURPOSE

The purpose of acquisition law is to avoid condemnation proceedings by offering all sellers a fair settlement. The purpose of relocation law is to justly compensate people who are displaced and must move from their homes or businesses due to public acquisition.

B. APPLICABILITY

Real property acquisition requirements apply to all agencies vested with the power of eminent domain.

Publicly funded private buyers (e.g., downpayment, closing cost recipients) should advise sellers: (1) that they do not have the power of eminent domain, and (2) of the fair market value of the property to be purchased.

Relocation requirements (including 104 (d) - Barney Frank) apply to any publicly assisted project which causes displacement.

Temporary easements and voluntary offers in response to a public solicitation are generally not subject to federal or state acquisition law. Call your Project Representative if you have any questions concerning applicability.

C. RELEVANT LAWS

1. Relevant Laws include:

- a. Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended, effective April 2, 1989.
- b. Section 104 (d) of the Housing and Community Development Act of 1974 (Barney Frank).
- c. 49 CFR 24 by the Department of Transportation and 24 CFR 570 by the Department of Housing and Urban Development.
- d. Wisconsin Eminent Domain and Relocation Law, Chapter 32. Wisconsin Administrative Code; Department of Commerce, Chapter 202.

2. Where the text cites regulations beginning with 24 (e.g., 24.101), reference is made to the Code of Federal Regulations, Department of Transportation (authorized by URA) 49 CFR 24. Regulations beginning with 570 (e.g., 570.496a) refer to the Department of Housing and Urban Development 24 CFR 570 ("Barney Frank"). Citations beginning with 32 (e.g., 32.19) refer to the state relocation law. COMM 202 refers to the Wisconsin Administrative Code, Chapter 202.

D. ACQUISITION AND RELOCATION REQUIREMENTS

1. General Acquisition & Relocation Procedural Comment

This chapter is intended to serve as only a general outline and reference source for grantees implementing an acquisition or relocation project. It is incumbent upon the Grantee to become familiar with and enforce relevant laws. Copies of pertinent laws may be obtained from Commerce.

- a. The Grantee must replace each LMI occupiable dwelling, including units in substandard condition suitable for rehabilitation, that is demolished or converted to other than LMI residential use (570.496 a, "Barney Frank"). Suitable for rehabilitation may be defined by the Grantee but includes units in any condition that have been occupied within a one year period (except by a squatter) preceding the executed contract date between the Department and Grantee (570.496a (c)(3)(iv and v)). A general rule of thumb is if a dwelling requires more than 50 percent of its after rehab value to repair, then the unit is not suitable for rehabilitation. The "One for One Public Disclosure Replacement Report" must be filed with the Department before the contract is signed (570.496 a (c)(1)(iii)). LMI Dwelling units are those units that do not exceed the fair market rent established under 24 CFR Part 888 (section 8 limits). Ask your Project Representative for the limits appropriate for your locality. The Grantee may take up to three years from the time of demolition or conversion to replace these units which must remain at or below the Section 8 rent limits for ten years (570.496 a (c)(1)(ii)(D and E). Newly rehabbed vacant units may count as replacement units (570.496 a (c)(1)(ii)(C).
- b. The Grantee must provide relocation benefits to anybody who is involuntarily displaced due to public acquisition by an agency with the power of eminent domain (Grantee) or anybody else carrying out a public project with CDBG-EAP funds. If this is to occur, a relocation plan must be submitted to, and approved by, the Relocation Specialist, Department of Commerce. In most situations, compliance with State relocation regulations will satisfy federal relocation requirements since State benefits usually exceed federal benefits. The Grantee must establish and maintain a relocation file for each displacee which will be monitored by Commerce. Contact the Relocation Specialist if you have questions regarding relocation applicability.

- c. If the property being acquired will leave the owner with an uneconomic remnant, the offer to purchase must be extended to the remnant also (24.102 (k)).
 - d. If it appears that the local agency will be forced into condemnation or any other situation arises which is not addressed here, call Commerce for help.
2. Basic Steps for Acquiring Real Property.
- a. Determine which properties are to be acquired.
 - b. If the project demolishes or converts a LMI dwelling to another use, complete the "One for One Public Disclosure Replacement Report" (Attachment 2) and mail it to Commerce.
 - c. If the project will involuntarily displace occupants, request from the Department of Commerce, Relocation Section, P. O. Box 7970, Madison, WI 53707-7970, a determination, in writing, of whether or not a relocation plan will be required for the intended acquisition. Contact Commerce BEFORE the project begins.
 - d. Submit relocation plan to Commerce (if required). If owner- occupants and/or tenants are to be involuntarily displaced, NO ACQUISITION ACTIVITIES MAY TAKE PLACE UNLESS COMMERCE HAS APPROVED OF THE GRANTEE'S RELOCATION PLAN.
 - e. "As soon as feasible" (24.102 (b)), deliver Preliminary Acquisition Notice and "Wisconsin Relocation Rights" and/or "The Rights of Landowners Under Wisconsin Eminent Domain Law" pamphlets to property owner with statement about the agency's real property acquisition policies (24.102).
 - f. Give a "relocation rights" pamphlet to each person displaced from a dwelling, business or farm. Also, give a "relocation rights" pamphlet to any person who must move personal property from the site. Residential or commercial "relocation rights" pamphlets are available from Commerce. Regarding status as a displaced person, note the following:
 - Generally, a residential or commercial tenant displaced by the project is a "displaced person."
 - Generally, an owner occupant of residential or commercial property is a "displaced person," if the acquiring agency is vested with eminent domain authority, even if the application is voluntary. However, in certain situations the owner may sign a waiver of relocation assistance. Waiver forms are available from Commerce and must be submitted to Commerce for review prior to acquisition.
 - g. Select and contract with a Wisconsin Certified Real Estate appraiser to complete an appropriate appraisal on the property. The appraiser must invite the owner (or his/her agent) to accompany the appraiser during the inspection of the property. An appraisal is not required if the property is estimated to be worth \$2,500 or less; or if the owner is donating the property and releases the

Grantee from their obligation to do an appraisal. Two appraisals are preferred but, not required (24.102 (c), 24.103).

- h. A qualified staff appraiser or an independent fee appraiser must make a written review of the submitted appraisal(s) to determine their correctness (24.104 (c)).
- i. The Grantee must establish in writing, a summary statement detailing how the amount of just compensation to be offered to the owner of the property was derived and a description of the property (24.102 (e)).
- j. Make an offer to purchase for the amount of established just compensation. Deliver the summary statement determining just compensation at the same time as the offer to purchase (24.102). The agency may not pay less than the reviewed appraisal (24.102 (d)). The date of the offer to purchase (initiation of negotiations) begins the displacement process if relocation applies.
- k. Negotiate the property acquisition including an explanation of: tenant-owned improvements (24.105), incidental transfer expenses (24.106) and condemnation litigation expenses (24.107).
- l. If negotiations fail, the Grantee may pursue an Administrative Settlement (24.102 (i)) up to 125% of the amount of just compensation but, does not exceed \$5,000 above just compensation. Department approval is required for any settlement that exceeds \$5,000 above just compensation.

Example 1: Just compensation = \$5,000. Maximum allowable offer not requiring Department approval is \$6,250 ($\$5,000 \times 125\%$) because the difference (\$1,250) is less than \$5,000.

Example 2: Just compensation = \$45,000. 125% of \$45,000 (= \$56,250, the difference is \$11,250) exceeds the \$5,000 limit. Maximum allowable offer not requiring Department approval is \$50,000.

- m. Sign the purchase agreement -OR-
Renegotiate -OR-
Condemn (24.102 (l))
- n. Execute the deed, complete settlement cost statement and make appropriate payment including incidental costs (24.106, 24.107 and Wisconsin Statutes 32.195).
- o. Record title to property now in the agency's name.
- p. Prepare files for Commerce review.

E. RECORDS

1. Separate Files

- a. Every parcel which is acquired using CDBG-EAP funds must have a separate folder. (If relocation is involved, those records must also be in a separate relocation folder for each displacee.)
- b. All acquisition records must be kept for at least three (3) years following the final payment for acquired property (24.9).

2. File Contents

- a. The Acquisition Summary Checklist (Attachment 1) must be completed and attached to the front of each acquisition folder. All documentation required for real property acquisition should be in the file in the order referenced on the Summary Checklist.
- b. INDIVIDUAL RELOCATION CASE FILE. An agency shall develop and maintain an individual case file for each displaced household beginning with information obtained in the initial interview. An individual relocation case file shall include the following:
 - 1) Name, on-site address and phone number, date of displacement, replacement address and phone number, and if a tenant or an owner, before and after relocation;
 - 2) The age and sex of dependent household members, the average monthly income of adult household members and the monthly housing cost of an acquired and replacement dwelling;
 - 3) A description of the business or farm operation being conducted, whether a displaced person relocated or discontinued, and the average monthly cost of the acquired and replacement facilities;
 - 4) A description of the dwelling, habitable space, number of rooms and bedrooms, and the type of construction;
 - 5) A description of relocation needs and preferences;
 - 6) Evidence that a displaced person received a pamphlet entitled, "Wisconsin Relocation Rights," and the date received;
 - 7) A copy of a written notice as specified under this chapter or otherwise given to a displaced person;
 - 8) Relocation service and assistance provided and the date;
 - 9) Referral to a replacement dwelling, business or farm operation, including the date, address, and sale or rental price;

- 10) A copy of an occupancy agreement for the period after acquisition;
- 11) A copy of a replacement property inspection document with the inspection date, description of a property and its condition;
- 12) Type and amount of each relocation payment made;
- 13) A copy of a relocation claim and supporting documentation and related documents for determining eligibility for or an amount of a payment, evidence of payment, and correspondence relating to a claim;
- 14) A copy of an appeal and an explanation of the action taken to resolve the appeal, and the final determination;
- 15) A copy of individual relocation case reports or other correspondence with the department;
- 16) The agency representative who provided relocation assistance.

Items (1) through (16) are requirements of the Wisconsin Administrative Code, Chapter COMM 202.

3. Confidentiality.

All acquisition records are confidential regarding their use as public information, unless applicable law provides otherwise (24.9).

ATTACHMENT 1

ACQUISITION SUMMARY CHECKLIST

As a means of ensuring that all required documents are on file, the following checklist should be used as a cover sheet for each parcel file:

Street Address of Property _____

Property Use. Brief Description _____

Owner(s) _____

Tenant(s) _____

Owner's Current Address _____

Home Telephone No. _____ Business No. _____

1. Date Grantee made determination to acquire.....
2. Date Preliminary Acquisition Notice and Brochure delivered to owner.....
3. a. Does this acquisition involuntarily displace anybody?
- b. If so, did the Grantee contact Commerce and follow an approved relocation plan?
4. a. Were any LMI dwellings demolished or converted to another use?
- b. If so, was a "One-for One Replacement Report" filed with the Department?
5. Is the appraisal(s) in the folder?.....
6. Is the appraisal review in the folder?
7. Did the appraiser(s) invite the property owner to accompany them during the inspection of the property?
8. Is a copy of the summary statement establishing just compensation in the file?
9. Date formal written offer and summary statement delivered to the owner(s) (Initiation of Negotiations).....
10. Offer to purchase accepted on:.....
11. If by condemnation, was Department notified?
12. Are copies of offer(s) to purchase, deed/title transfer, evidence of payment, and any other important documents and correspondence in the file?

Summary of appraisal and negotiations.

First Appraisal	Second Appraisal (Optional)	Review Appraisal	Just Compensation	Initial Offer	Final Settlement
\$	\$	\$	\$	\$	\$

Grant Administrator negotiating this acquisition

ATTACHMENT 2

ONE FOR ONE PUBLIC DISCLOSURE REPLACEMENT REPORT

24 CFR 570.496a (c)(1)(iii).

Before the state recipient (Grantee) enters into a contract committing it to provide funds under this part for any activity that will directly result in the demolition of low/moderate-income dwelling units or the conversion of low/moderate-income dwelling units to another use, the recipient must make public and submit the following information in writing to the State:

- A. A description of the proposed assisted activity;
- B. The location on a map and the number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for low/moderate-income dwelling units as a direct result of the assisted activity;
- C. A time schedule for the commencement and completion of the demolition or conversion;
- D. The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;
- E. The source of funding and time schedule for the provision of replacement dwelling units;
- F. The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least ten years from the date of initial occupancy; and
- G. Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a two-bedroom unit with two one-bedroom units) is consistent with the housing needs of low- and moderate-income households in the jurisdiction.